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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,151	04/02/2004	Lisa D. McCullar	2J02.1-011	1193
23506	7590	03/22/2005	EXAMINER	
GARDNER GROFF, P.C. 2018 POWERS FERRY ROAD SUITE 800 ATLANTA, GA 30339			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/817,151	MCCULLAR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gloria Hale	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Pre-Amendment of 1-11-05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-6-04/8-30-04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 1 recites the limitation "the intersection" in line 4. There is insufficient antecedent basis for this limitation in the claim. The same limitation is also in claim 2, line 2; claim 3, lines 2-3 and claim 9, line 3. In claim 9, lines 5-8 it is not clear as to whether the medical device is specifically being claimed or is just part of an intended use statement.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Maria (US 5,991,923).

Maria discloses a post-surgical garment 10 including at least one front panel 44 and at least one back panel 12; at least one opening along the intersection of the front and back panel and at least one pocket structured as claimed adjacent the at least one

opening 78 on the inside surface (90, as seen in figure 8) and /or on the outside surface (110, figure 9). Maria discloses the garment for use with the medical device as claimed. (100 with tubing 102,106).

Claim\*s 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Buonassiss (US 4,601,067).

Buonassiss discloses a vest with a back panel with an inside and an outside face, first and second front panels attached to the back panel along lateral edges thereof with arm holes; closures along ventral edges of the first and second front panels and an access opening between the back panel and at least one of the front panels. Buonassiss also discloses at least one of the front panels as comprising a pocket on the inside face.

Claims 1, 3, 7,9, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiley (US 4,737,995).

Wiley discloses a post-surgical patient garment, pants (41) with at least one front panel and at least one back panel; an opening (at seam 47 with hook and loop fasteners) along an intersection of the front and back panels and at least one pocket 49 adjacent the at least one opening. The Wiley garment discloses a pocket 49 on an exterior face of the front panel.

Claims 1,2,7,9-11,13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Leger et al (US 6,574,800).

Leger et al discloses a post surgical garment (23) including at least one front panel 28 and at least one back panel 39; at least one opening 43 along the intersection of the front and back panel and at least one pocket 20 structured as claimed adjacent to the at least one opening on the outside surface. (See Leger et al., vol. 6, line 61- col. 7, line 10; col. 9, line 56 – col. 10, line 2). Leger et al discloses the garment as being constructed with or without sleeves 18 which would be a vest construction. Leger et al discloses the front ventral opening with closures 24 and fasteners 22. Leger et al is for use with a medical device with an intermediate tubing portion (See Leger et al, col. 6, line 61 – col. 11, line 49 and figures 2-4).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maria (US 5,991,923) in view of Leger et al (US 6,574,800).

Maria discloses the patient garment with pockets substantially as claimed. However, Maria does not specifically disclose the garment structure as being a vest (See Maria, figures 1-3; col. 3, line 60 – col. 4, line 55). Leger et al discloses a patient gown, torso 16 that can be constructed with or without sleeve portions 18 to form a vest construction with front openings as in figures 3 and 4. (See Leger et al, figures 3 and 4; col. 5, lines 49-65). Accordingly it would have been obvious to one having ordinary skill in the art at

the time the invention was made to construct the separable side garment of Maria without sleeves in a front opening vest construction as disclosed by Leger et al in order to achieve a desired aesthetic effect as a vest style garment and to provide comfort to the wearer in a warmer environment.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maria (US 5,991,923) in view of Steele et al (US 5,305,471).

Maria discloses the invention substantially as claimed except for the pocket closure securement mechanism. Steele et al discloses a pocket with a securement mechanism hook and loop fasteners 20,22 in order to secure the pocket contents within the pocket as desired. (See Steele et al, figure 2, col. 4, lines 15-19).

Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leger et al. in view of Steele et al. (US 5,305,471).

Leger et al discloses the invention substantially as claimed. However, Leger et al does not specifically disclose the pocket as including closure means. Steele et al discloses a closure means 20,22 on a pocket to secure items within the pocket. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pocket of Leger et al with the teaching of Steele et al to include a closure mechanism 20,22 to secure items within the pocket. (See Leger et al, figure 2 and col. 4, lines 15-19).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buonassiss(US 4,601,067) in view of Steele et al. (US 5,305,471).

Buonassiss discloses the invention substantially as claimed. However, Buonassiss does not specifically disclose the pocket as including closure means. Steele et al discloses a closure means 20,22 on a pocket to secure items within the pocket. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pocket of Buonassiss with the teaching of Steele et al to include a closure mechanism 20,22 to secure items within the pocket. (See Leger et al, figure 2 and col. 4, lines 15-19).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leger et al.(US 6,574,800) in view of Maria (5,991,923).

Leger et al discloses the invention substantially as claimed. However, Leger et al does not specifically disclose the pocket as being on the inside surface. Maria discloses a medical garment with a pocket on the inside of the garment in order to place items hidden from outside view yet accessible to the wearer. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment of Leger et al with the teaching of Maria to include a pocket on the inside surface in order to hide the pocket from view yet allowing access to the pocket by the wearer. (See Maria, figures 8 and 9, col. 5, lines 1-20).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley (US 4,737,995) in view of Steele et al (US 5,305,471).

Wiley discloses the invention substantially as claimed except for the pocket closure securement mechanism. Steele et al discloses a pocket with a securement mechanism

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hook and loop fasteners 20,22 in order to secure the pocket contents within the pocket as desired. (See Steele et al, figure 2, col. 4, lines 15-19).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley in view of Gupton (US 6,468,254).

Wiley discloses the invention substantially as claimed. However, Wiley does not specifically disclose the interior pocket. Gupton discloses a pant garment with an interior medical item pocket 1. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment of Wiley with the teaching of Gupton to place a pocket on the interior surface of the pant to insert medical items therein in order to hide them from outside view while still allowing for access to the wearer. (See Gupton, figures 1 and 2 and col. 4, lines 66-67).

Claim 4 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Wiley (US 4,737,995) in view of Well (US 4,766,613).

Wiley discloses the invention substantially as claimed. However, Wiley does not specifically disclose the leg portion separation at the knee for converting the pants to shorts. Wells discloses a pant garment 10 that has a separable fastener portion 42 to convert the pants to shorts by removing the lower parts 32,34. (See Wells, col. 2, line 67 – col. 3, line 15, 26-42 and figure 1).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maria (US 5,991,923) in view of Piloian (US 5,142,702).



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Maria discloses the invention substantially as claimed. However, Maria does not specifically disclose the pocket a including a bellows. Piloian discloses a pocket as seen in figure 3 with a bellows at the pocket bottom to allow for a pocket expansion. Such pockets are widely used and well known in garment manufacturing. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pocket of Maria to include a bellows therein as taught by Piloian to allow for pocket expansion and larger items to be placed therein. (See Piloian, figure 3).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leger et al in view of Piloian (US 5,142,702).

Leger et al. discloses the invention substantially as claimed. However, Leger et al. does not specifically disclose the pocket a including a bellows. Piloian discloses a pocket as seen in figure 3 with a bellows at the pocket bottom to allow for a pocket expansion. Such pockets are widely used and well known in garment manufacturing. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pocket of Leger et al. to include a bellows therein as taught by Piloian to allow for pocket expansion and larger items to be placed therein. (See Piloian, figure 3).

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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